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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. OMAR BRADLEY, Defendant and Appellant.	B285690 (Los Angeles County Super. Ct. No. BA240392)

APPEAL from a judgment of the Superior Court of Los Angeles County, George G. Lomeli, Judge. Affirmed.

Ralph H. Goldsen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Omar Bradley of two counts of misappropriation and misuse of public funds in violation of Penal Code section 424, subdivisions (a)(1) and (a)(2).[1] On appeal, Bradley challenges his conviction on instructional and evidentiary grounds. He also challenges the trial court's denial of his motion for acquittal on the second count. We affirm the judgment.

FACTS

Bradley was elected to the city council of Compton (the city) in 1991 and served as its mayor from 1993 to 2001. As mayor, he remained a member of the city council. The other members of the city council during the relevant period were Amen Rahh, Delores Zurita, Marcine Shaw, and Yvonne Aceneaux. The city council appointed John Johnson to be the city manager in 1999.

Credit Cards Are Issued

After Johnson became city manager, the city council adopted a resolution that authorized the city to issue credit cards to city council members and the city manager. The resolution restricted the use of the credit cards to approved expenses related to city business. It also required the cardholder to be personally liable for any unauthorized charges.

At all times, the city had to approve business-related travel. City officials requested travel advances, which the city manager could approve if the request was less than $5,000. Any larger expenditures required approval by a majority of the city council. Once approved, the controller's office paid any requested amounts for transportation, meals, or hotel either directly to the vendor or to the city official.

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[1] All further section references are to the Penal Code unless otherwise specified.

If an official incurred costs exceeding the amount of the travel advance, he submitted receipts and a reimbursement form to the city manager for review and approval. If the official could not obtain a receipt for the excess costs, a "written statement" to the city manager regarding the cost was required. If the city official did not use the entire travel advance, the remainder was to be returned to the city. This procedure remained in effect even after credit cards were issued.

Initially, the credit card bills were delivered to the city clerk. The bills were routed to the controller's office, then to the city manager's office, and finally to the treasurer's office. At some point, the city clerk became concerned about certain charges on the credit cards and raised the issue with the city council. Public Records Act requests about the credit cards were filed, and a local news program broadcast a segment about possible misuse of the credit cards.

Johnson subsequently directed the city clerk to reroute the credit card bills directly to his office unopened, skipping over the controller's office. He also ordered the credit card statements redacted to show only the amounts charged, removing any description of what was charged.

Meanwhile, the city clerk and treasurer both began to surreptitiously keep copies of the credit card statements. The treasurer noticed that city council members were receiving advances for expenses they later charged to their city-issued credit cards.

Prior Proceedings

Bradley, Rahh, and Johnson were charged with the misuse of public funds in connection with their use of the city-issued credit cards. The People alleged each official "double billed" by

receiving a travel advance for expenses on city-related travel, then using their city-issued credit cards to pay for the same expenses. A jury found them guilty. This court affirmed the convictions. (*People v. Bradley* (2006) 142 Cal.App.4th 247 (*Bradley I*).)

In 2012, the Supreme Court returned the matter for reconsideration in light of *Stark v. Superior Court* (2011) 52 Cal.4th 368 (*Stark*), which holds section 424 requires "that the defendant knew, or was criminally negligent in failing to know, the legal requirements that governed the act or omission." (*Stark*, at p. 377.) Without the benefit of *Stark*, the trial court had not instructed the jury on the mental state required for a violation of section 424. We affirmed Rahh's and Johnson's convictions, finding the error was harmless beyond a reasonable doubt in their cases. We reversed Bradley's conviction, however, concluding the error was prejudicial in his case. (*People v. Bradley* (2012) 208 Cal.App.4th 64 (*Bradley II*).)

Current Proceedings

On remand, the prosecution retried Bradley on the same charges: misappropriation of public funds in violation of section 424, subdivision (a)(1) (count 1) and subdivision (a)(2) (count 2). At trial, the prosecution again presented evidence of double billing. Spreadsheets itemizing the expenditures at issue were admitted into evidence.[2] An investigative auditor with the District Attorney's office testified to duplicate or excess payments of $3,433.55 to Bradley. The prosecution also presented evidence that Bradley charged personal expenses totaling $3,874.38 to the

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[2] For purposes of this summary it is unnecessary to set forth all the transactions that formed the basis of the prosecution's case. We describe certain transactions in greater detail below.

city-issued card, including green fees at a country club, golf equipment, in-room movies during hotel stays, and airfare for his wife and daughter.

Bradley asserted in defense that he received the city manager's approval for these expenditures as required under Compton's policies. He testified Johnson authorized him to use the travel advances for city-related business expenditures that were not originally approved. For example, there was a hurricane when he arrived at a Congressional Black Caucus conference in 1999. Johnson advised Bradley to use the city-issued credit card to pay for the hotel and save the cash advance for unexpected expenses due to the hurricane. Bradley also used the credit card to pay for daily taxi trips, necessitated by the bad weather.

Bradley further testified he immediately repaid any amounts he owed when he learned of the investigation into his use of the credit card. He wrote a $4,000 check to the city without knowing the exact amount he owed. He believed the charges against him were merely a campaign of revenge by individuals who held a grudge against him for disbanding the Compton Police Department during his tenure.

The jury found Bradley guilty on both counts. The trial court suspended execution of a three-year prison term for count 1 and placed Bradley on three years of formal probation, with credit for time served. The court stayed the sentence on count 2 pursuant to section 654. Bradley timely appealed.

DISCUSSION

Bradley asserts instructional error and insufficient evidence mandate reversal of his convictions. He also challenges the trial court's refusal to dismiss the second count alleged against him. We conclude reversal is not warranted.

I. Section 424

The Legislature enacted section 424 as part of its 1872 adoption of the Penal Code. Its sole purpose is to protect and keep safe public funds and hold accountable those in a position to place public funds at risk. (*People v. Hubbard* (2016) 63 Cal.4th 378, 387; *People v. Dillon* (1926) 199 Cal. 1, 5.) To that end, section 424 sets forth punishment for every state or local officer, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who:

(1) appropriates public moneys to personal use or the use of another without authority of law (§ 424, subd. (a)(1))[3] or

(2) loans, makes a profit out of, or uses public moneys for any purpose not authorized by law (§ 424, subd. (a)(2)).[4]

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[3] Section 424 was amended in 2003, after the original indictment in this matter, to additionally demarcate its provisions into subdivisions (a)(1)–(a)(7), (b), and (c). We adopt the current enumeration in this opinion.

[4] The remaining subdivisions of section 424 provide punishment for any listed public officer or person who: knowingly keeps any false account or makes any false entry or erasures in any account of or relating to the same (§ 424, subd. (a)(3)); fraudulently alters, falsifies, conceals, destroys, or obliterates any such account (§ 424, subd. (a)(4)); willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority (§ 424, subd. (a)(5));

The crime is a felony punishable by imprisonment in state prison for 2, 3, or 4 years and disqualification from holding office. (§ 424, subd. (a).) Section 424, "works in reverse of most penal statutes that apply to ordinary citizens. Rather than prohibiting specifically enumerated behavior, it prohibits any behavior which has not been previously approved by statute or ordinance." (*People v. Battin* (1978) 77 Cal.App.3d 635, 654.)

In *Stark*, s*upra*, 52 Cal.4th at page 390, the high court confirmed section 424 to be a general intent crime. However, it found that the presence or absence of legal authorization for the defendant's conduct is not only an element of the crime. It is also "a 'fact' about which the defendant must have knowledge in order to act with wrongful intent. Thus, the People must prove, as a matter of fact, *both* that legal authority was present or absent, *and* that the defendant knew of its presence or absence." (*Stark,* at pp. 397–398.) The court further held that the required mental state for a violation of section 424 is either actual knowledge or criminal negligence in failing to know the legal requirements underlying the section 424 charges. (*Stark,* at p. 399.)

II. Bradley Fails to Establish Prejudicial Instructional Error

Bradley claims the trial court incorrectly instructed the jury about the charged crimes. Specifically, Bradley contends the trial court erred when it refused to instruct the jury that reimbursement is a defense to the misuse of public funds and

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willfully omits to transfer the same, when such transfer is required by law (§ 424, subd. (a)(6)); or willfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same (§ 424, subd. (a)(7)).

when it gave a special instruction on section 424, subdivision (a)(1). We find no merit in these claims.

A. Standard of Review

We review de novo any challenges to jury instructions. (*People v. Spaccia* (2017) 12 Cal.App.5th 1278, 1287 (*Spaccia*).) A trial court must fully and accurately instruct the jury on the applicable law. (*People v. Mil* (2012) 53 Cal.4th 400, 409.) " ' " 'In determining whether error has been committed in giving or not giving jury instructions, we must consider the instructions as a whole . . . [and] assume that the jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given.' [Citation.]" [Citation.]' " (*Spaccia, supra,* at p. 1287.) " ' "Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation." [Citation.]' " (*Ibid.*)

B. No Error Resulted From the Trial Court's Failure to Give a Restitution Instruction That Was Contrary to the Law of the Case

Bradley challenges the trial court's failure to instruct the jury that restitution is a defense to a violation of section 424. We rejected an identical claim in *Bradley II*, which has become law of the case. Bradley fails to assert a legitimate basis for us to reconsider our prior holding.

1. Procedural Background

In *Bradley II,* we determined the trial court correctly instructed the jury that restitution is not a defense to the crime of misappropriation of public funds, reasoning that the crime is complete when the city-issued credit card is used to purchase a personal item or when the defendant fails to promptly return

unused travel advances. (*Bradley II, supra,* 208 Cal.App.4th at pp. 81–82.) We noted that the repayments Bradley and his codefendants made were prompted by the criminal investigation into their conduct, rather than due to an untimely return of advanced money or innocent oversight.[5] (*Id.* at p. 82.)

We also rejected Bradley's argument that retention of unspent funds cannot become unauthorized unless some law specifies a deadline for repayment, or the defendant has not reasonably complied with a demand for return of the funds. (*Bradley II, supra,* 208 Cal.App.4th at p. 78.) We explained, "When a public entity entrusts public funds to a public official, he or she is authorized to hold the funds only so long as necessary for the purposes required. Any funds unused for the intended purpose must be promptly returned to the public entity that has entrusted the funds. Nothing in section 424 requires the public entity to set a deadline for, or demand, the return of such funds. To assume a public official may hold entrusted funds indefinitely unless authorization is revoked violates the letter and spirit of section 424." (*Bradley II,* at p. 78.)

At Bradley's retrial, the court indicated it was not inclined to give an instruction that reimbursement is a defense to the charged crimes. Instead, the court again instructed the jury that restitution is not a defense, giving CALJIC No. 14.46 over defense counsel's objection.[6] After the jury began its

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[5] The evidence at Bradley's retrial on this issue also established Bradley's repayments were, for the most part, prompted by the criminal investigation.

[6] CALJIC No. 14.46 was read to the jury as follows: "It is not a defense to a prosecution for theft that after the theft was committed, complete or partial restitution or offer of restitution

deliberations, however, the parties advised the trial court they agreed to withdraw the CALJIC No. 14.46 instruction. The trial court accordingly "advised [the jury] that of the instructions read to you by the court, orally, instruction 14.46, an instruction on restitution, has been withdrawn [from] the packet and you are to disregard that instruction completely."

2. The Law of the Case Controls

Bradley contends the trial court erred when it withdrew the restitution instruction without also instructing the jury that restitution is a defense to misappropriation of public funds. As a preliminary matter, Bradley may not contend withdrawal of the instruction was erroneous, having requested it.[7] (*People v. Wader* (1993) 5 Cal.4th 610, 657–658 [applying doctrine of invited error to request for jury instruction].) Indeed, Bradley concedes his trial counsel did not object to withdrawal of the instruction or request an instruction on reimbursement as a defense at that time. As a result, he has forfeited this issue. (*People v. Young* (2005) 34 Cal.4th 1149, 1202.)

Further, the trial court did not err by failing to give an instruction to the jury that is contrary to the law of the case. Once it becomes final, an appellate court opinion controls subsequent proceedings in the same case under the doctrine of

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was made to the owner of the stolen property, or that his loss was wholly or partly recovered by any other means."

[7] Bradley also argues the jury could have misconstrued the instruction to "disregard that [restitution] instruction completely" as allowing it to disregard the issue of reimbursement completely. Given Bradley's cursory treatment of this argument without citation to legal authority, we summarily reject it. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

"law of the case." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) § 14:171, pp. 14–66, and cases cited therein.) When an appellate court " 'states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout [the case's] subsequent progress, both in the lower court and upon subsequent appeal . . . .' " (*Kowis v. Howard* (1992) 3 Cal.4th 888, 893.) "The doctrine promotes finality by preventing relitigation of issues previously decided." (*Sargon Enterprises, Inc. v. University of Southern California* (2013) 215 Cal.App.4th 1495, 1505; *Searle v. Allstate Life Ins. Co.* (1985) 38 Cal.3d 425, 434.)

The doctrine of law of the case is inapplicable "where its application will result in an unjust decision, e.g., where there has been a 'manifest misapplication of existing principles resulting in substantial injustice' [citation], or the controlling rules of law have been altered or clarified by a decision intervening between the first and second appellate determinations [citation]." (*People v. Stanley, supra,* 10 Cal.4th at p. 787.) Still, "[t]he unjust decision exception does not apply when there is a mere disagreement with the prior appellate determination. [Citation.]" (*Ibid; People v. Ramos* (1997) 15 Cal.4th 1133, 1161; *People v. Whitt* (1990) 51 Cal.3d 620, 638; *DiGenova v. State Board of Education* (1962) 57 Cal.2d 167, 179–180.)

Law of the case applies here. Indeed, Bradley acknowledges *Bradley II* determined precisely the issue at hand—that restitution is not a defense to a charge of misuse of public moneys. Yet, he urges us to reconsider the issue, contending *Bradley II* was wrongly decided. Bradley argues the

restitution analysis in *Bradley II* was dictum, not a holding necessary to the decision. We disagree.

Bradley raised the restitution defense issue in *Bradley II*, the parties addressed it, and this court considered and actually decided the issue, as explicitly reflected in the opinion. (See *Bradley II, supra,* 208 Cal.App.4th at pp. 81–82.) This court's conclusion in *Bradley II* that restitution was not a defense to the crime of misappropriation of public funds, and that the trial court did not err in so instructing the jury, was a necessary ground of the decision. (*People v. Mendoza* (2000) 23 Cal.4th 896, 915; *Hubbard v. Superior Court* (1997) 66 Cal.App.4th 1163, 1168.) Bradley's dictum argument is meritless.[8]

In short, our conclusion in *Bradley II* that restitution is not a defense to the section 424 charges against Bradley is law of the case. The California Supreme Court declined to grant review of this issue. We, in turn, decline to reconsider the issue or allow Bradley " 'to continually reinvent [his] position on legal issues that have been resolved against [him] by an appellate court.' "

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[8] Bradley's appellate briefing also includes a discussion of *Breceda v. Superior Court* (2013) 215 Cal.App.4th 934 (*Breceda*), a case published after *Bradley II*. Bradley argues *Breceda* supports the arguments he made in *Bradley II* regarding reimbursement as a defense. To the extent Bradley's intent is to assert that *Breceda* represents a change in controlling law, we reject the argument. *Breceda* is a court of appeal opinion that does not address the issue at bar. Although the facts in *Breceda* involved "double dipping" by public officials, the case concerns evidentiary issues and holds only that the prosecution was required to disclose potentially exculpatory evidence regarding city policies to the grand jury. *Breceda* is not controlling, intervening law that conflicts with *Bradley II*.

(*Joyce v. Simi Valley Unified School Dist.* (2003) 110 Cal.App.4th 292, 304.) We have no basis to address Bradley's arguments that *Bradley II* is wrongly decided. The trial court was also bound by law of the case and did not err by failing to instruct the jury on a matter of law in direct conflict with this court's holding in *Bradley II*.

C. Bradley Fails to Establish Any Reversible Error Arising From the Jury Instruction on Section 424, Subdivision (a)(1)

Bradley next contends the trial court erred when it approved the prosecutor's special instruction on section 424 and failed to give the standard instruction provided by CALJIC No. 7.26.1.[9] Bradley's argument concerns two statements contained within the special instruction: (1) that authority of law may include both penal and nonpenal laws; and (2) that public officials must take reasonably necessary steps to determine the appropriateness of their conduct. Bradley contends these statements were misleading and misstated the law. He also argues the instruction was erroneous for failing to identify a specific local rule or ordinance as the "authorizing law" under the statute. We reject these arguments.

1. Proceedings Below

There is no standard CALCRIM instruction for a violation of section 424. CALJIC No. 7.26.1, however, provides an instruction on section 424 and its elements. Defense counsel urged the trial court to give CALJIC No. 7.26.1 as written. The prosecutor asked the trial court to give a special instruction,

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[9] The instruction for count 2 was substantially the same except it provided the elements of a violation of section 424, subdivision (a)(2), rather than section 424, subdivision (a)(1).

which generally tracked the language of CALJIC No. 7.26.1, but also included certain amendments. We set forth the instruction as it was given to the jury, with the amendments in italics and the challenged statements underlined.

> "Defendant is accused in Count 1 of violating Penal Code section 424, subdivision (a)(1), a crime.
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> Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who without authority of law, appropriates the same or any portion thereof, to his or her own use, or to the use of another, is guilty of a violation of Penal Code section 424, subdivision (a)(1), a crime.
>
> The phrase, 'public moneys' [as used in this instruction,] includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, district, or public agency therein and all moneys, bonds, and evidences of indebtedness received or held by state, county, city, town, or public agency officers in their official capacity.
>
> An officer or a person is charged with the receipt, safekeeping, transfer, or disbursement of public moneys so long as he is entrusted with responsibilities or duties relating to, and has a degree of material control over, the receipt, safekeeping, transfer, or disbursement of public money that amounts to being charged with such authority. Whether someone exercises that degree of material

control over public funds depends on actual function as much as—if not more than—formal title. Examining a person's actual and formal responsibilities is essential to your determination. It is sufficient if the public officer controls public funds so as to cause their expenditure for nonpublic purposes. *There is no requirement that the defendant have actual possession of the public moneys, or that the "control over public funds" be the primary function of the defendant's job.*

Authority of law may include both penal and non-penal laws regulating the manner in which public funds may or may not be expended or allocated, such as: The California Penal Code, and local city charters, resolutions, and ordinances.

The term officer includes *the Mayor of a Charter City*.

The People must prove that the defendant knew that his conduct was not authorized by law, or that defendant was criminally negligent in not knowing *that his conduct was not authorized by law*. However, the People are not required to prove that the defendant knew all the details of the law *prohibiting the conduct, or that the defendant knew of the specific law prohibiting the conduct*. It is sufficient if the defendant knew generally that *a penal or* nonpenal law prohibited his conduct.

'Criminal negligence,' as used in this instruction, refers to a higher degree of negligence than is involved in ordinary negligence. Ordinary

negligence is the failure to exercise ordinary or reasonable care. 'Criminal negligence' must be aggravated, gross, or reckless, *as measured by what is objectively reasonable for a person in the defendant's position.*

Under the law, public officials are obligated to take reasonably necessary steps to determine the appropriateness of their conduct.

In order to prove this crime, each of the following elements must be proved:

1. The defendant was an officer of the City of Compton;

2. The defendant was charged with the receipt, safekeeping, transfer or disbursement of public moneys;

3. The defendant, without authority of law, appropriated public moneys to his or her own use or to the use of another; and

4. *At the time of the unlawful appropriation*, the defendant either knew that the law prohibited his appropriation of public moneys to his own use, or to the use of another, or was criminally negligent in failing to discover whether he had the legal authority to make the appropriation."

At trial, defense counsel asked the court to strike the reference to penal laws as a basis for a violation of section 424 because it was contrary to the holding in *Stark,* which referred only to "nonpenal" laws. (*Stark, supra,* 52 Cal.4th at p. 397.) The prosecutor disagreed, arguing *Stark* did not address the issue of penal laws, and "penal laws supersede any local municipal laws."

The trial court did not read *Stark's* references to "nonpenal laws" to specifically exclude penal laws. It approved the amendment, stating, "I like the fact that [the People's] instructions are more specific and it gives more direction to the trier of fact."

2. There is no reasonable likelihood that the inclusion of "penal law" in the instruction caused the jury to apply it in an impermissible manner

The *Stark* court described section 424(a)(1) as "incorporat[ing] a legal element derived from other *noncriminal* legal provisions." (*Stark, supra*, 52 Cal.4th at p. 397.) The court further described the "law" as referenced in section 424 as encompassing the wide variety of requirements relating to an official's duties. It explained, "The 'law' applicable to the acts and omissions in these provisions of section 424 is the *authorizing* law, which is extraneous to the penal statute. Liability under section 424 arises when the officer or custodian, bound by these authorizing laws, acts without authority (§ 424(a)(1)) . . . . For the sake of clarity, we will refer to these authorizing laws as 'nonpenal laws,' to distinguish them from the crimes defined in section 424." (*Ibid.*, fn. omitted.)

Bradley challenges the trial court's instruction to the jury that "[a]uthority of law may include both penal and non-penal laws." However, he acknowledges the instructions did not identify any penal law that regulated municipal spending and, as a result, asserts this court need not decide whether *Stark* limited "without authority of law" in section 424 to nonpenal laws only.[10]

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[10] Despite his argument that the inclusion of "penal law" in the instruction misstated the law, he also asserts: "It is conceivable that a preemptive state statute could limit local authority through a Penal Code statute, but if that were the case,

Instead, Bradley contends the instruction was misleading because it suggested to the jury that state penal law usurped Compton's process to allow the city manager to distinguish between personal expenses and city-related expenses. We disagree.

"In reviewing a claim of instructional error, the ultimate question is whether 'there was a reasonable likelihood the jury applied the challenged instruction in an impermissible manner.' [Citation.] '[T]he correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction.' [Citation.]" (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1220, abrogated on a different ground by *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.)

A review of the entire statement Bradley challenges demonstrates the fallacy of his argument. The relevant portion of the instruction reads: "Authority of law may include both penal and non-penal laws regulating the manner in which public funds may or may not be expended or allocated, such as: The California Penal Code, and local city charters, resolutions, and ordinances." The statement, read in context, expressly placed the Penal Code alongside other legal authorities including the local city charters, resolutions, or ordinances. The instruction did not suggest the jury could ignore the city's resolution or procedures in favor of the Penal Code.

Bradley appears to concede this point when he admits in his opening brief that "[t]he instructions in this case did not encourage the jury to disregard compliance with Compton

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the instruction would have to reference the statute and its provisions."

procedure, but the prosecutor's argument did." To the extent Bradley contends there was prosecutorial misconduct, he has forfeited the argument for failure to object at trial or raise the issue on appeal. (*People v. Morales* (2001) 25 Cal.4th 34, 43.)

3. Bradley forfeited his challenge to the portion of the instruction regarding "appropriateness."

Bradley next asserts he cannot be convicted of conduct that is simply "inappropriate" under section 424, rather than unauthorized by law. He thus contends it was prejudicial error to instruct the jury that "[u]nder the law, public officials are obligated to take reasonably necessary steps to determine the appropriateness of their conduct."

As an initial matter, Bradley has forfeited this issue by failing to object to this portion of the instruction at trial. (*People v. Young, supra,* 34 Cal.4th at p. 1202.) According to Bradley, he requested that the trial court adopt the standard instruction, which did not contain the challenged language. He contends his general objection is sufficient to preserve the issue. Yet, as Bradley himself acknowledges, the instruction contains 580 words and he "objected on numerous grounds to the proposed instruction." None of those "numerous grounds" was an objection to this particular sentence in a two-page long instruction. Thus, Bradley's request for the standard instruction did not properly preserve this specific issue for review.

Even assuming the issue was preserved, the challenged language does not misstate the law. Indeed, it comes almost verbatim from the Supreme Court's decision in *Stark*: "But even in complex situations, public officials and others are nevertheless obligated to act 'in strict compliance with the law.' [Citation.] They are expected to take reasonably necessary steps to

determine the appropriateness of their conduct." (*Stark, supra*, 52 Cal.4th at p. 402.) *Stark* also noted that " '[t]he safekeeping of public moneys has, from the first, been safeguarded and hedged in by legislation most strict and severe in its exactitudes. It has continuously been the policy of the law that the custodians of public moneys or funds should hold and keep them inviolate and use or disburse them only in strict compliance with the law,' " and that " 'duty requires the person to acquaint himself with the facts.' [Citation.]"[11] (*Id.* at pp. 399, 403.)

It is clear in *Stark*, and in the trial court's instruction based on the language in *Stark*, that "appropriateness" refers to the public official's duty to "act 'in strict compliance with the law,' " and "to be aware of and indeed embrace the duties the law imposes upon" him. (*Stark, supra*, 52 Cal.4th at pp. 402, 400.) The language regarding "appropriateness" helps explain the section 424 mental state requirement of actual knowledge of, or criminal negligence in failing to know, the legal requirements underlying a section 424 charge.

"An instruction can only be found to be ambiguous or misleading if, in the context of the entire charge, there is a reasonable likelihood that the jury misconstrued or misapplied its words." (*People v. Campos* (2007) 156 Cal.App.4th 1228, 1237.) In this case, the complete instruction to the jury is replete

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[11] We reject Bradley's contention that we should disregard the above quote from *Stark* because it is dictum and thus, not controlling. (*Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 297, [dictum, especially from the Supreme Court, "while not controlling authority, carries persuasive weight and should be followed where it demonstrates a thorough analysis of the issue or reflects compelling logic"].)

with references that a violation of 424 occurs when there is a lack of legal authority, not just inappropriate conduct. Indeed, the prosecutor never suggested that Bradley be convicted for inappropriate expenditures, rather than for expenditures which were not authorized by law.

4. The trial court was not required to identify the local rule or ordinance.

Bradley further contends the instruction was erroneous because it failed to identify the specific Compton charter, municipal code, or rule that conferred or withheld the "legal authority" referenced in section 424, subdivision (a)(1). This is a bracketed, optional portion of CALJIC No. 7.26.1. In the use note, the committee instructed, "In the event the court is asked to take judicial notice of the nonpenal law or laws, a space has been provided in a bracketed paragraph. It can be deleted if it becomes irrelevant." (CALJIC No. 7.26.1 (2017 rev.), use note.) The trial court was not asked to take judicial notice of any of the extrinsic laws underlying the section 424 charge. Nor does Bradley present any authority requiring the specific code or rule be identified to the jury in CALJIC No. 7.26.1.[12] In any event, Bradley himself testified that the city council's credit card resolution governed use of the credit cards and restricted that use to approved city-related expenses. Bradley also testified the credit card was not to be used for personal expenses. The

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[12] The *Stark* court noted a violation of section 424(a)(1) may occur because "no lawful authority sanctioned the defendant's actions," or "the defendant's action as expressly prohibited by particular lawful authority." (*Stark*, 52 Cal.4th at p. 397, fn. 9.) In some cases it is the absence of legal authority that forms the basis for the violation.

prosecution presented testimony that city money could not be used for personal expenses.

III. The Trial Court Properly Denied Bradley's Motion For Acquittal On Count 2

At the close of all evidence, Bradley moved for a judgment of acquittal on count 2 pursuant to section 1118.1[13] on the ground there was no evidence of a loan made by or to him. The prosecutor argued the evidence supported a theory that the travel advances in question were loans that Bradley intended to pay back. The trial court agreed with the prosecutor and denied the motion. Bradley argues this was error. In considering Bradley's argument, we examine the whole record to determine whether substantial evidence supports denial of the section 1118.1 motion. (*People v. Hajek and Vo, supra,* 58 Cal.4th at p. 1182.) We conclude it does.

One indication of a loan is the obligation of repayment. "To be sure, 'A loan transaction contemplates a debtor-creditor relationship with an obligation of the "debtor" to repay the amount of the loan to the creditor . . . .' [citation.]" (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 802.) Bradley's defense at trial focused on restitution. Bradley testified he reimbursed the city $300 for travel advances he did not spend on a trip to the Congressional Black Caucus conference in September 1999. He also testified he eventually delivered a $4,000 check to the city when his assistant informed him about the investigation into money he owed for city-related travel.

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[13] Section 1118.1 requires the trial court to enter a judgment of acquittal on one or more of the offenses charged if the evidence is insufficient to sustain a conviction of those offenses.

In addition, the prosecution presented testimony that Bradley should have reimbursed the city for any funds that were advanced to cover expenses he later charged to the city-issued credit card. The evidence also demonstrated the city sometimes paid for Bradley's personal expenses, which he was expected to repay. For example, in 2000, Bradley's city-issued credit card was used to pay for airfare for Bradley, his wife, and his daughter to fly to the Congressional Black Caucus conference in Washington, DC. It was not the city's policy to pay for family members' travel expenses. Indeed, on a separate occasion when the city paid for Bradley's brother's airfare, Bradley's assistant specifically asked him how he wished to repay the city. The evidence that Bradley was expected to repay some of his personal travel expenses was sufficient to support a finding that at least some of the advanced funds were loans Bradley was to repay.

Bradley attempts to avoid the import of this evidence by narrowly defining the term "loan." Relying on statutory and common law definitions of "loan" from different fields of law, including public financing, mortgage, and tax, he asserts a loan under section 424 means a legal contract between the lender and the borrower, evidenced by specific terms of repayment. Bradley contends there is no evidence he entered into a contract to repay a specific amount at a specific time in consideration for receiving a travel advance. He also cites evidence that there is no provision in the city charter for lending money and the city never made personal loans to employees or council members.

We reject Bradley's arguments limiting what constitutes a loan under section 424, subdivision (a)(2). " 'Because of the essential public interest served by [section 424,] it has been construed very broadly.' " (*Stark, supra,* 52 Cal.4th at p. 400,

quoting *People v. Groat* (1993) 19 Cal.App.4th 1228, 1232.) It follows that section 424's use of the term "loan" should be broadly construed as well.

"In determining whether a transaction constitutes a loan, the significant consideration is the substance of the transaction rather than its form or the terminology used by the parties." (*Burr v. Capital Reserve Corp*. (1969) 71 Cal.2d 983, 989.) It is unnecessary that a specific time for repayment or a specific sum be identified from the outset. "[I]t is a well-established principle of contract law that '[i]f no time is specified for the performance of an act required to be performed, a reasonable time is allowed.' " (*The McCaffrey Group, Inc. v. Superior Court* (2014) 224 Cal.App.4th 1330, 1351, quoting Civ. Code, § 1657.) The trial court properly denied Bradley's motion for acquittal on count 2.

IV. Bradley Fails to Present a Cognizable Sufficiency of the Evidence Argument

At trial, the prosecution presented evidence that Bradley purchased two golf clubs totaling $484.88 at a private country club in Orange County. Bradley explained the golf clubs were intended to be auctioned off to raise money for championship rings for a local high school that had won the state basketball championship in 1999 and 2000. He further testified he repaid the city when the city manager did not approve the purchase.

On appeal, Bradley devotes seven pages of his opening brief to argue the purchase of the golf clubs cannot support the verdict. The Attorney General correctly points out in the respondent's brief that the purchase of the golf clubs was "other crimes" evidence, not to be used to prove Bradley was guilty of the charged crimes. In his reply brief, Bradley concedes, "Respondent is correct that the jury was instructed not to convict

appellant on the basis of the golf club transaction. That transaction was offered as 'other crimes evidence' under Evidence Code section 1101(b)."

However, he claims the golf clubs were merely a "starting point" and he "could and would make similar arguments as to each of the other 15 acts or omissions." Despite this assertion, he fails to do so. He makes no effort in either the opening brief or reply brief to cite to the record or any legal authority to support an insufficient evidence argument. Indeed, he states, "Appellant would challenge the sufficiency of the evidence to support either of the verdicts, but to do so would require arguments specific to each of 16 acts, and make this brief exceed word limits." Acknowledging that he has waived this argument, Bradley requests we accept supplemental briefing on the issue. We decline to do so.

DISPOSITION

The judgment is affirmed.

ADAMS, J.*

We concur:

GRIMES, Acting P. J.

WILEY, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.